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09/558,933	04/26/2000	John F. Acres	4164-125	1655
20575	7590	12/05/2005	EXAMINER	
MARGER JOHNSON & MCCOLLOM, P.C. 210 SW MORRISON STREET, SUITE 400 PORTLAND, OR 97204			HOTALING, JOHN M	
			ART UNIT	PAPER NUMBER
			3714	

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/558,933
Filing Date: April 26, 2000
Appellant(s): ACRES, JOHN F.

MAILED
DEC 05 2005
Group 3700

Scott A. Schaffer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/7/05 appealing from the Office action
mailed 5/17/04.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

EP 0769769	HEIDEL	04-1997
US 6,302,793	FERTITTA, III ET AL	10-2001

WO 97/12315

FOUND

04-1997

(9) Grounds of Rejection

The following ground(s) of rejection were presented in the final office action are applicable to the appealed claims and are reproduced herein for the convenience of the board:

Claims 12-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Heidel (EP 0769769). Claims 12 – 16 have not been substantively amended. Therefore, this rejection remains unchanged from the prior office action.

Heidel discloses a video gaming machine having a touch screen. The game machine includes a card reader (30), a machine communications interface (70), display (12), programmed electronics (inherent), and a video overlay device (56). The game machine is connected to a host computer (68) which includes a database of player account information such as a player name, player id, and player point totals. Figure 3 shows the division of the display screen when accessing the player tracking information from the game machine. In column 6 of the disclosure, Heidel states "In addition, because video display 12 is under the control of a microprocessor, the system has enhanced flexibility. For example, at a touch of a suitable area (not shown) on the screen 23, service request key area 80 can be displayed from which the player can order casino services or request change without interrupting game play." Clearly, this suggests a video overlay or superimposition of data upon the play screen. Inherently this could include the information/message display area 76 as well.

Claims 17 - 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidel in view of Fertitta, III et al (Fert). Claims 17-21 have not been substantively amended. Therefore, this rejection remains unchanged from the prior office action.

Heidel indicates that player tracking is included in his system without the need to retrofit the game machines with a "systems box". He eludes that tracking systems are known, and states generally "the data system tracks total wagering activity for each player so that frequent activity can be rewarded...". He clearly shows a player name, or ID, and a point (or point session) total in his illustrative display. Fert teaches a player tracking system which includes other known tracked data points such as a personal progressive, comp point balances, player ratings (extra credit) and bonus point balances (loyalty). In short, a designer of a system can create as many types of data fields and track activity data with an endless segregation of names and requirements as are deemed necessary to promote play and keep the player at the machine. It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize known data tracking fields in the Heidel tracking system, such as those illustrated by Fert, in order to promote play, keep the player at the machine and reward frequent activity. Such is the overall intent of all player-tracking systems.

Claims 1, 2 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidel (EP 0769769) in view of Found et al (PCT 97/12315) hereinafter Found.

Heidel discloses a video gaming machine having a touch screen. The game machine includes a card reader (30), a machine communications interface (70), display (12),

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programmed electronics (inherent), and a video overlay device (56). The game machine is connected to a host computer (68) which includes a database of player account information such as a player name, player id, and player point totals. Figure 3 shows the division of the display screen when accessing the player tracking information from the game machine. In column 6 of the disclosure, Heidel states "In addition, because video display 12 is under the control of a microprocessor, the system has enhanced flexibility. For example, at a touch of a suitable area (not shown) on the screen 23, service request key area 80 can be displayed from which the player can order casino services or request change without interrupting game play." Clearly, this suggests a video overlay or superimposition of data upon the play screen. Inherently this could include the information/message display area 76 as well.

Heidel differs only from the present limitation of claim 1 which requires the generating the game display information in a first display electronics and generating the player account display in a second display electronics. Even though Heidel suggests the desirability of the overall claimed function of providing account information over the game screen via a drop down menu without interrupting game play, Heidel only shows one set of display electronics and does not suggest there can be any arbitrary delineation of a first set from a second set.

In an analogous game machine/display system, Found teaches the addition of a second set of display electronics expressly for the purpose of generating overlay messages to a player of the game device. The video overlay electronics are provided on a separate circuit board which is capable of being installed into a standard gaming

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machine. The Found system, discussed at least on page 6, appears most applicable to displaying jackpot information yet suggests on page 13, line 20, "It will be appreciated by those skilled in the art that the arrangement (retrofittable second set of electronics for generating/superimposing) provides a convenient and flexible arrangement for superimposing video character information on the video output displays of various types of electronic gaming machines? Clearly, Found suggests the desirability of retrofitting gaming machines with a second set of display electronics for generating an overlay image of textual information.

One of ordinary skill in the art seeking to implement the Heidel teaching of providing the ability to view account information without interrupting game play would recognize the advantages suggested by the Found teaching. In particular, the provision of a second set of display electronics for creating an overlay image of the account information and the superimposing that image on a game display would allow existing games to be retrofitted with the desired functionality of Heidel without alteration to the existing graphics generation hardware/software arrangement. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a second set of display electronics for generating the overlay information on the Heidel device in view of the structure/teachings contributed to the art by Found.

Claims 3 and 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidel in view of Found as applied to claim 1 above, and further in view of Fertitta, III et al (Fert).

Heidel, as modified above by Found, indicates that player tracking is included in his system without the need to retrofit the game machines with a "systems box". He eludes that tracking systems are known, and states generally "the data system tracks total wagering activity for each player so that frequent activity can be rewarded...". He clearly shows a player name, or ID, and a point (or point session) total in his illustrative display.

Fert teaches a player tracking system which includes other known tracked data points such as a personal progressive, comp point balances, player ratings (extra credit) and bonus point balances (loyalty). In short, a designer of a system can create as many types of data fields and track activity data with an endless segregation of names and requirements as are deemed necessary to promote play and keep the player at the machine. It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize known data tracking fields in the Heidel tracking system, such as those illustrated by Fert, in order to promote play, keep the player at the machine and reward frequent activity. Such is the overall intent of all player-tracking systems.

(10) Response to Argument

The examiner will respond to the Appellant's arguments according to the subsections set up by the Appellant.

A. Claims 1,2 and 4-6 are not obvious in view of the Heidel/Found combination

The examiner does not agree.

First regarding the Heidel reference, applicant argues that no "overlay device" was provided and that the structure of Heidel could not be used to retrofit. To the extent these arguments are commensurate in scope with the claim language, they have been addressed above in the rejections. Further, appellant's note that to appellant's knowledge, the assignee of the Heidel disclosure has never used an overlay device in industry. Respectfully, actual use or lack thereof of technology does not erase teachings of patents and printed publications from the tome of analogous prior art which one of ordinary skill in the art is presumed to have knowledge of.

In response to applicant's argument that the Found patent does not teach interfacing the gaming machine with a player tracking system, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In the instant case Heidel differs only from the present limitation of claim 1 which requires the generating the game display information in a first display electronics and generating the player account display in a second display electronics. Even though Heidel suggests the desirability of the overall claimed function of providing account information over the game screen via a drop down menu without interrupting game play, Heidel only shows one set of display electronics and does not suggest there can be any arbitrary delineation of a first set from a second set. The appellant's assertion that the different

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data types overlay on the display device are different that the claims should be allowable. This is an attempt by the Appellant to make an argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the instant case, there is a clear teaching of overlaying player tracking data on a game screen what is lacking is specifically how data can be overlay for which the reference to Found teaches the claimed structure.

B. Claims 3 and 7-11 are not obvious in view of the Heidel/Found/Fertitta Combination

The examiner does not agree.

With respect, the response to arguments of section A are equally relevant and incorporated by reference herein. The Appellant argues that Fertitta simply discloses personalized data fields that runs counter to that of general information displayed in the Found patent. In response, please see columns 3, 5, and 6 of Found where it is disclosed that the video touch screen display is fully programmable by the gaming machine which organizes messages and key areas to provide a highly flexible and informative user interface. This section provides adequate motivation to find other

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useful information to be displayed to the user such as additionally player tracking info and jackpot information.

C. Claims 12-16 are not anticipated by the Heidel reference

The examiner does not agree.

With respect the appellant argues regarding claim 12 that Heidel does not have "communication means for bi-directional communication between the host computer and the gaming machine...including *supplemental commands operative with said gaming electronics to combine said game image with player tracking image* generated from said player tracking information communicated from said host computer to said gaming machine." Respectfully, this is inherently within the Heidel teaching as the overall function is preformed. Heidel possess communication means at least in elements 70 and 72 which bidirectionally communicate between the host computer 68 and the gaming machine 34. Host computer 68 has a data base for storing player account data and for archiving accounting and other information. Through touch screen controller 60 and video display controller 56, CPU 34 generates touch sensitive key areas for player input and message areas for outputting information. Whatever the player selects via the touch areas or pull down menu, the host computer responds to. For example, if a casino service purchase is requested, the host computer verifies the requested transaction and authorizes the gaming machine to proceed with the transaction. This includes player notification that the request has been accepted and therefore inherently includes supplemental commands to provide an appropriate display

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overlay. Claim 12 does not claim a video overlay device but a combination of a game image with a player tracking image which is disclosed in Heidel as a touch of a suitable area (not shown) on the screen 23, service request key area 80 can be displayed from which the player can order casino services or request change without interrupting game play." Clearly, this suggests a video overlay or superimposition of data upon the play screen. Inherently this could include the information/message display area 76 as well.

With respect to claim 13 appellant submits that Heidel fails to show "a video overlay device interposed between said gaming electronics and said video game display...electronics". Respectfully note video controller 56 interposed between gaming electronics 34 and display 12 in Heidel. That applicant believes his claims to require more than the function of overlaying does not preclude the reasonable interpretation of the examiner's in that the applied prior art performs the identical function for the identical reason and therefore anticipates.

D. Claims not obvious in view of the Heidel/Fertitta references

The examiner does not agree.

The appellant argues that Heidel does not create separate original and overlay images but rather creates a combined image in the first instance.

Heidel does disclose player tracking data coming from a host computer and gaming information coming from a game machine where the player tracking information overlays the game machine data as disclosed above. That applicant believes his

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claims to require more than the function of overlaying does not preclude the reasonable interpretation of the examiner's in that the applied prior art performs the identical function for the identical reason and therefore anticipates.

(11) Related Proceeding(s) Appendix

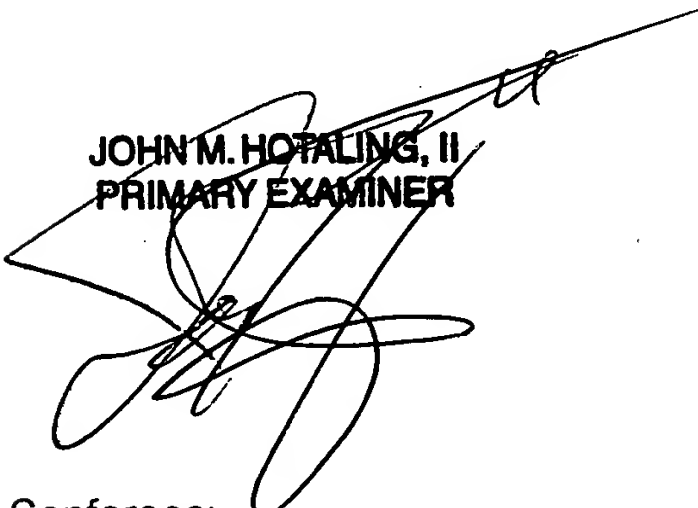
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

John Hotaling

**JOHN M. HOTALING, II
PRIMARY EXAMINER**



Conferees:

Scott Jones Primary Examiner



Corbett/Coburn Primary Examiner

